

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN IOT DEVICES AND COMPONENTS
THEREOF (IOT, THE INTERNET OF
THINGS)—WEB APPLICATIONS DISPLAYED
ON A WEB BROWSER**

Investigation No. 337-TA-1094

**NOTICE OF COMMISSION DECISION TO REVIEW AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION AND
ON REVIEW TO AFFIRM THE TERMINATION BASED UPON
THE ACTUAL EXPIRATION OF THE ASSERTED PATENT;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 10), which terminated the investigation for good cause on the basis of the imminent expiration of the asserted patent. On review, the Commission has determined to affirm the termination based upon the actual expiration of the asserted patent.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 22, 2018, based upon an amended and supplemented complaint filed by Lakshmi Arunachalam, Ph.D. and WebXchange, Inc., both of Menlo Park, California. 83 FR 3021 (Jan. 22, 2018). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by a number of proposed respondents in the importation into the United States,

the sale for importation, or the sale within the United States after importation of certain IOT devices and components thereof (IOT, the Internet of Things)—web applications displayed on a web browser by reason of infringement of certain claims of U.S. Patent No. 7,930,340 (“the ’340 patent”), as well as unfair methods of competition and unfair acts (criminal and civil RICO violations, breach of contract, theft of intellectual property, antitrust violations, and trade secret misappropriation), the threat or effect of which is to destroy or substantially injure an industry in the United States. 83 FR at 3021. The Commission determined to institute the investigation only as to infringement of the ’340 patent, and named as respondents Apple Inc. of Cupertino, California; Facebook, Inc. of Menlo Park, California; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Electronics Co., Ltd. of Seoul, South Korea. *Id.* at 3022. The Office of Unfair Import Investigations (“OUII”) was also named as a party. *Id.*

On January 29, 2018, the respondents moved to terminate the investigation based upon the then-imminent expiration of the ’340 patent. The complainants responded in opposition to the motion. The ALJ denied the motion for failure to comply with Commission rules. Order No. 8 at 2 & n.1 (Feb. 20, 2018). On February 21, 2018, the respondents filed a renewed motion to terminate, which corrected the omission in their previous motion. The complainants renewed their opposition to the motion. OUII supported the motion.

On February 27, 2018, the ALJ granted the motion as an ID, finding that good cause exists for terminating the investigation. The ID finds that given “the structure of section 337 investigations” there was insufficient time for the Commission to “reach a final determination or issue any relief before the March 5, 2018 expiration date” of the ’340 patent. Order No. 10 at 6.

On March 5, 2018, the ’340 patent expired. That same day, the complainants filed a “Motion for Rehearing and Reinstating the Investigation” (“Compl’ts Submission”). The Commission determined to treat that submission as a petition for Commission review of the ID under 19 CFR 210.43. The petition seeks an advisory ruling on certain issues. Compl’ts Submission 6.

On March 12, 2018, the respondents and OUII filed responses in opposition to the complainants’ submission. The responses explain, *inter alia*, that the complainants’ submission does not provide an adequate basis for Commission review under Commission Rule 210.43(b)(1), 19 CFR 210.43(b)(1). Resp’ts Resp. 3; OUII Resp. 1, 3.

Having considered the record of the investigation, including the parties’ submissions to the Commission, the Commission decides as follows. The Commission “can issue only an exclusion order barring future importation or a cease and desist order barring future conduct,” neither of which can issue as to an expired patent. *Texas Instruments Inc. v. U.S. Int’l Trade Comm’n*, 851 F.2d 342, 344 (Fed. Cir. 1988). Because the ’340 patent has now actually expired, the ID’s good cause (the imminent expiration of the patent) is now moot. Accordingly, the Commission has determined to review the ID, and, on review, to affirm the termination based upon the actual

expiration of the '340 patent. The Commission declines the complainants' invitation to issue advisory rulings, and terminates the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton".

Lisa R. Barton
Secretary to the Commission

Issued: March 23, 2018